

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: ICC-02/04-01/15
Date: **18 February 2019**

TRIAL CHAMBER IX

Before:

**Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Raul C. Pangalangan**

SITUATION IN UGANDA

**IN THE CASE OF
*THE PROSECUTOR v. DOMINIC ONGWEN***

Confidential

**CLRV Response to the “Prosecution’s Request for
Disclosure of the Third Report by Defence Experts”**

Source: Office of Public Counsel for Victims

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Ms Fatou Bensouda
Mr Benjamin Gumpert

Counsel for the Defence

Mr Krispus Ayena Odongo
Chief Charles Achaleke Taku

Legal Representatives of the Victims

Ms Paolina Massidda
Ms Jane Adong
Mr Joseph Akwenyu Manoba
Mr Francisco Cox

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda
Mr Orchlon Narantsetseg
Ms Caroline Walter

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The Common Legal Representative of Victims¹ (the “CLR/V”) submits that the “Prosecution’s Request for Disclosure of the Third Report by Defence Experts” (the “Request”)² should be granted.

2. The CLR/V posits that the Legal Representatives of Victims should also be provided with the report in question since the personal interests of the participating victims are affected by the subject matters of the expert evidence which directly relate to the criminal liability of the Accused and the defences that he raised pursuant to Article 31 of the Rome Statute.

II. PROCEDURAL BACKGROUND

3. On 13 February 2019, the Prosecution filed the Request.³

III. CONFIDENTIALITY

4. The present submission is filed confidential following the classification chosen by the Prosecution. A public redacted version will be filed in due course.

¹ See the “Decision on contested victims’ applications for participation, legal representation of victims and their procedural rights” (Pre-Trial Chamber II, Single Judge), No. ICC-02/04-01/15-350, 27 November 2015, p. 19; the “Decision on issues concerning victims’ participation” (Pre-Trial Chamber II, Single Judge), No. ICC-02/04-01/15-369, 15 December 2015, pp. 10-11; the “Second decision on contested victims’ applications for participation and legal representation of victims” (Pre-Trial Chamber II, Single Judge), No. ICC-02/04-01/15-384, 24 December 2015, pp. 20-22; and the “Decision on the ‘Request for a determination concerning legal aid’ submitted by the legal representatives of victims” (Trial Chamber IX, Single Judge), No. ICC-02/04-01/15-445, 26 May 2016, para. 13.

² See the “Prosecution’s Request for Disclosure of the Third Report by Defence Experts, No. ICC-02/04-01/15-1446-Conf, 13 February 2019 (the “Request”).

³ *Idem.*

IV. SUBMISSIONS

5. The CLRV notes that the Prosecution requested the Chamber to order the Defence to disclose a report recently prepared by Defence's Expert Witnesses D-0041 and D-0042 on the basis of their recent meetings with Mr Ongwen relating to his mental health (the "Third Report").⁴ The Prosecution contends that the disclosure of the Third Report is necessary for assessing and testing the experts' reliability, methodology and conclusions and for the determination of the truth.⁵

6. The CLRV supports in full the Request agreeing with the reasons provided by the Prosecution in its submission. Moreover, the CLRV posits that the Third Report should also be made available to the Legal Representatives of Victims since the subject matters of the expert evidence directly relate to issues which affect the personal interests of the participating victims, namely the criminal liability of the Accused and the defences that he raised pursuant to Article 31 of the Rome Statute. Needless to say, the resolution of these matters may determine the final outcome of the trial and thus profoundly impact the right of the victims to truth and justice, and ultimately, to reparations.

7. Having access to the Third Report is critical for the Legal Representatives of Victims in comprehensively evaluating and weighing the evidence to be elicited by the Defence's expert witnesses and properly expressing the views and concerns of the victims on the matter. In this regard, the CLRV recalls that similar expert reports and related material have consistently been disclosed to the Legal Representatives of Victims in the past.⁶

⁴ *Ibidem*, paras. 1-2.

⁵ *Ibid.*, paras. 1-14.

⁶ See the "Decision on 'Prosecution's request to order the Defence to comply with rule 79'" (Trial Chamber IX, Single Judge), No. ICC-02/04-01/15-460, 7 June 2016, para. 17 and p. 17; the "Initial Directions on the Conduct of the Proceedings" (Trial Chamber IX, Single Judge), No. ICC-02/04-01/15-497, 13 July 2016, paras. 10, 14, 32-33; the "Decision on the 'Prosecution Request for Disclosure of Material Underlying the Defence Psychiatric Expert Report'" (Trial Chamber IX, Single Judge), No. ICC-02/04-01/15-709, 21 February 2017; and the "Decision on Prosecution Request for Disclosure of

8. **For the foregoing reasons**, the Common Legal Representative of Victims respectfully requests the Chamber to grant the Request and to order that the Third Report be also made available to all Legal Representatives of Victims.



Paolina Massidda
Principal Counsel

Dated this 18th February 2019

At The Hague, The Netherlands